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by the owner and cared for throughout the journey by him. This will not excuse the company from providing a sufficient number of cars or from any defects, especially latent defects, in their construction, or in the construction of the pens, chutes, &c., provided at their stations, by means of which the animals are injured; but it will undoubtedly meet such cases as those in which, *e. g.*, having hired a certain number of cars from the

company, the plaintiff proceeds to overload them; *O. & M. R. R. v. Dunbar*, 20 Ill. 623; or where, the defects in the cars being notorious or brought home to the knowledge of the plaintiff, he nevertheless hires them, though others more suitable were procurable: *Harris v. North. Ind. Co.*, 20 N. Y. 232; *Kimball v. R. & B. R. R. Co.*, 26 Verm. 342.

R. S. H.

Supreme Court of Errors of Connecticut.

MERIDEN BRITANNIA CO. v. CHARLES PARKER.

A manufacturing company will be protected in the use of a certain trade-mark, though part of the trade-mark consists of a family name.

Equity will restrain the use of the same name in so far as it forms a material part of the trade-mark, and will necessarily injure the company, even though another may acquire the right of that name from parties to whom it legitimately belongs.

It is not every use of the name, however, that will be held to necessarily infringe the trade-mark, or that will be restrained by injunction.

Though equity will not protect a trade-mark which deceives the public, it is not every erroneous impression which may be drawn from the use of a trade-mark, that will be sufficient to destroy its validity.

The employment of a family name as a component part of a trade-mark is no fraud upon the public, though the family does not actually make the articles bearing the name, provided they are the result of their skill and experience.

The complainant, a company engaged in manufacturing plated forks and spoons, acquired the right to the use of the trade-mark—"1847 Rogers Bros. A. 1."—subsequently the respondent by an arrangement with three brothers named Rogers, manufactured plated spoons marked "C. Rogers Bros. A. 1.," Held, that this was an infringement of complainant's trade-mark, and that the use of the term "Rogers Bros." should be restrained.

THIS was a petition for an injunction to restrain the respondent from the use of a certain trade-mark. The case was tried by PARK, J., who found the facts, and the Superior Court reserved the cause for the advice of this court.

H. B. Harrison and *O. H. Platt*, for petitioners.

C. R. Ingersoll, *D. R. Wright* and *R. Hicks*, for respondent.

The opinion of the court was delivered by

CARPENTER, J.—The report of the committee contains an

elaborate statement of facts, many of which are immaterial in themselves; but important only as being evidential of other facts which are material: there is also a reference to a large mass of documentary evidence used on the trial, all of which is simply evidence tending to prove the material facts in controversy.

In this connection we may add that many of the questions discussed in the able and exhaustive arguments to which we listened, are questions of fact. Of course it is not our province to decide such questions, and we shall not attempt to do so. We think, however, that the essential facts are sufficiently found. They may be stated in comparatively few words.

In 1847, three brothers, William, Asa H. and Simeon S. Rodgers, commenced the business of manufacturing plated ware, especially plated spoons and forks. They continued in that business until 1872, either as partners or in connection with certain joint stock corporations, which they or some of them were instrumental in organizing; the principal of which were the "Rogers Brothers Manufacturing Company" and "Rogers, Smith & Company," of Hartford, and "Rogers & Brothers" of Waterbury.

The goods produced by them were of a superior quality and acquired a good reputation in market.

In 1862, they and said corporations, except the corporation of Rogers & Brother, of Waterbury, had ceased to do business.

November 7th 1862, they made a contract with the petitioners, by which, and by subsequent contracts, the petitioners acquired the right which they now have, to manufacture and sell plated spoons and forks with the name Rogers stamped thereon as a component part of a trade-mark. They also became entitled to have and did in fact have the benefit of the skill and experience of the three brothers in that department of their business. They adopted and now use as their trade-mark the words and figures "1847 Rogers Bros. A. 1," which differs some what from the trade-mark previously used by the Rogers Brothers, or the corporations organized by them.

The petitioners have not only preserved the reputation which the Rogers goods had in market, but they have materially improved and extended that reputation so that, to some extent, they have a valuable interest in their trade-mark in addition to the interest, if any, originally acquired by contract.

The Waterbury corporation still exists, and is doing a large

business. They adopted as their trade-marks, which are still in use, "Rogers & Brother A 1," and "Rogers & Bro. A. 1."

The petitioners now own a large majority of the stock in that corporation, and are themselves carrying on business to some extent in New Haven, in the name of Rogers, Smith & Company, under the supervision of one Geo. W. Smith. Since March 1868, all the business done in this line by the Rogers Brothers, or any one of them, has been for, or in connection with, the petitioners.

It was understood by wholesale dealers generally, that goods stamped with the petitioners' said trade-mark, were manufactured by the petitioners under the superintendence of Rogers Brothers; while consumers generally understood that Rogers Brothers were themselves the manufacturers.

Such understanding on the part of the consumers was induced in part by said trade-mark, and in part by circulars, bill-heads, correspondence, &c.

The petitioners adopted and used said trade-mark by the consent of Rogers Brothers, and no person or corporation has questioned their right so to do.

In November 1866, three brothers, another family, Cephas B. Rogers, Gilbert Rogers, and Wilbur F. Rogers, who were then engaged in manufacturing coffin trimmings under the partnership name of C. Rogers & Brothers, made an arrangement with the respondent, whereby he agreed to manufacture for them plated spoons and forks, stamped C. Rogers & Bros., or C. Rogers Bros. A. 1.

The petitioners did not consent to the use of the stamps. In March 1871, by a further arrangement between the same parties, the respondent was authorized also to manufacture plated spoons and forks on his own account, bearing the stamp C. Rogers & Brothers, or C. Rogers Brothers. The goods manufactured under this arrangement were in fact stamped C. Rogers Bros. A 1, until about the 1st of February 1872, since which time they have been stamped "C. Rogers & Bros. A 1." These stamps, as the committee expressly finds, resemble the petitioners' trade-mark, "1847, Rogers Bros. A 1," to that degree that they are calculated to deceive and do deceive unwary purchasers, and those who buy such goods hastily and with but little examination of the trade-mark, and induce such traders to believe and they do believe that the spoons and forks sold by the respondent, bearing such stamps,

are manufactured by the same parties that manufacture spoons and forks bearing the stamps "1847, Rogers Bros. A 1," &c., but purchasers who read the entire trade-mark on the respondent's goods, and who know the petitioners' trade-mark, cannot be deceived, nor can they mistake the respondent's goods for those of the petitioners.

Large quantities of the respondent's spoons and forks have been sold by him upon the reputation of goods bearing such trade marks, to wit: "Rogers Bros. A 1," "Rogers & Bros. A 1," and "1847, Rogers Bros. A 1."

These are the principal and most important facts. There are other facts, material to some extent, which will be noticed in their proper connection.

Two questions arise in this case:—

1st, Have the petitioners a right to protection in the use of the stamp, "1847, Rogers Bros. A 1," as a trade-mark?

2d, Is the respondent violating that right?

1. The respondent contends that the petitioners are not entitled to protection in the use of said trade-mark, on several grounds. The first is, that the name Rogers Brothers cannot be lawfully used by the petitioners as a trade-mark, for the reason that long before the petitioners commenced to stamp their goods with that name it had been appropriated by other manufacturers for that purpose, and it was then well known in the market as a brand for the goods of manufacturers other than the petitioners.

It is necessary to observe that the trade-mark, in the use of which the petitioners claim protection, is not "Rogers Brothers," but Rogers Bros. with the figures 1847 prefixed, and the letter and figure A 1 annexed.

The combination constitutes the trade-mark. The mere fact that the name Rogers Brothers had been previously used by other persons and corporations cannot of itself operate to prevent the petitioners from acquiring a right to the use of the same name as a part of their trade-mark.

All the corporations which had a right to use that name had ceased to exist on the 7th day of November 1862.

The corporation of Rogers & Brother, of Waterbury, were stamping goods Rogers & Brother A 1, and Rogers & Bros. A 1, but such stamps differ from that of the petitioners, and the com-

mittee finds that the parties themselves regarded their respective stamps as independent trade-marks.

The reputation which attached to the Rogers goods had its origin in the skill, taste and judgment of the three brothers. They had a right superior to all others to avail themselves of that reputation.

Although they had in certain instances imparted to certain corporations the right to use their name, yet in every instance that right was connected with their own services and profits. Every such corporation, except the Waterbury company, had lost or surrendered that right by ceasing to manufacture goods.

The right to the use of their own name, therefore, must revert to the Rogers Brothers, or we must practically deprive them, and in some measure the public, of all future advantage to be derived from their superior skill and industry.

Policy as well as the dictates of reason and justice require the former.

The fallacy in the argument of the counsel for the respondent seems to be this :—They assume that the petitioners' trade-mark is identical with a trade-mark adopted and used by the several partnerships and corporations preceding them. But it is not a case of a continuing trade-mark used by successive partnerships and corporations. It is rather a question relating to the right of parties to the use of their own name as a component part of several trade-marks used respectively by partnerships and corporations with which they are connected.

Viewed in that light, we see no difficulty in allowing these parties to use their own names freely, except as their right to do so is limited by their obligations to the Waterbury company.

That corporation only acquired the right from two of the brothers to use the name "Rogers and Brothers" and "Rogers & Bro." That right continues, and is entitled to protection as against the parties from whom it was acquired and others claiming under them.

But they do not complain ; on the contrary the circumstances are such that both they and the petitioners are satisfied, and we do not see that the respondent has any cause of complaint, or right to derive any advantage from the fact, that the trade-marks of the two parties resemble each other.

We are satisfied, therefore, that the Messrs. Rogers had as

against the respondent a right to the use of their own names, and might, under certain legal restrictions, impart that right to the petitioners.

It is not denied that the parties have attempted to do so, and have in fact done so by their several contracts, so far as it may be lawfully done.

And that brings us to the next objection interposed by the respondent, which is that this has not been done lawfully, for the reason that the name as used by the petitioners in their trade-mark does not indicate the true origin of the goods, and that it untruthfully represents that the Rogers Brothers manufactured said goods.

The principle of law underlying this objection is fully conceded, and that is that courts of equity will not protect a trade-mark which deceives the public. We do not suppose, however, that the deception need be of such a character as to work a positive injury to purchasers, nor on the other hand that every erroneous impression which the public, or a portion of the public, may receive, will be sufficient to destroy the validity of the trade-mark.

The question, then, is whether in this case the representation is of such a character as to defeat the petitioners' claim to protection. The goods manufactured by the parties under their arrangement were manufactured under the personal superintendence of the Messrs. Rogers, or some of them, and were the product of their skill, experience and judgment.

It is unnecessary to examine in detail all the evidence contained in the report tending to prove this proposition. The proposition itself is abundantly established. The first contract between the parties provided that the goods should be of a given standard and quality; that the Messrs. Rogers should direct as to the manner of stamping the goods; should approve the weight, patterns, papers, boxes, labels, &c., and should devote their time and skill to the procuring of orders for the sale of said goods; that Simeon S. Rogers should superintend the weighing of spoons and forks before and after plating to determine whether they contained the required quantity of silver, and should devote his time, labor and skill in the business of cutting down, buffing, setting, papering, boxing and labelling goods.

The contract in all these respects was complied with, and to that extent the goods were manufactured according to the mind and will of the Rogers Brothers.

It also appears that William Rogers superintended the alteration of the petitioners' dies (of which about 1500 were in use), devised new patterns, and to a great extent remodelled the mechanical department of the petitioners' manufactory of spoons and forks, and had the general supervision of that department until the fall of the year 1865. He was then absent until March 1868, when he returned and resumed, and continued the oversight and general superintendence of that department as before, until in the winter of 1870-71, when he became incapable of so doing by reason of ill-health.

Since that time his son has performed to some extent the same duties. Asa H. and Simeon S. Rogers also have been employed most of the time in connection with this business. Now it distinctly appears that the goods placed upon the market under the several contracts between these parties, were not only quite up to the standard of the Rogers goods previously sold, but in some respects were superior in quality and style. We have thus referred to details sufficiently, perhaps, to show conclusively that the public were in no sense defrauded by whatever representation the trade-mark contained, and that such representation, so far as it indicated that Rogers Brothers were the manufacturers of the goods in question, was in an important sense true.

All that the public or the trade cared to know, was that the goods were the production of their skill and experience.

That fact, as it seems to us, clearly appears. The further fact that the petitioners furnished capital and machinery, employed and paid laborers and sold the goods, is entitled to little weight, so far as this question is concerned, although it shows that in another sense the petitioners were the manufacturers of said goods.

We are satisfied that there is no such misrepresentation as the cases contemplate, which hold that a trade-mark which states a falsehood, is not entitled to protection. If this were not enough to dispose of this objection, we might add that it does not clearly appear that the trade-mark in fact represented, or caused any one to believe, that Rogers Brothers were the manufacturers in any other sense than that just considered, which was, so far as we can judge, the same sense in which they had always been the manufacturers since 1853. Ever since then the name has been used in various forms, and generally in such a manner as to denote a partnership, while they were in fact but stockholders in corporations.

Now if we may suppose that the public were familiar with the history of this enterprise, and the various changes enumerated in the report, we shall have no difficulty in supposing that when the petitioners' trade-mark appeared, the name denoted what it had previously, that the goods were manufactured by some company or corporation with which Rogers Brothers were connected.

The other branch of this objection, that it did not indicate the true origin of the goods, refers mainly to the misrepresentation already considered.

In other respects it has no particular force. Like all other symbols and devices used as trade-marks, its import was not at first perhaps fully understood. The effect as well as the value of a trade-mark, is the work of time and experience.

This probably was no exception to the rule. However this may be, it seems to have been well understood at the date of this petition, that goods bearing that stamp were manufactured by the petitioners.

2. The next question is whether the respondent, by the manner in which he carries on his business, interferes with and injures the business of the petitioners. On this question there is little room for doubt or argument. Under his present arrangement he commenced stamping goods "C. Rogers Bros. A 1," but since February 1872 he has stamped them "C. Rogers & Bros. A 1." The committee finds that these stamps resemble the petitioners' trade-mark to such a degree that they are calculated to deceive and do deceive a class of purchasers, and that the respondent has sold large quantities of goods upon the reputation of goods bearing the stamp of the petitioners and of the Waterbury company. It is also found that the respondent had full knowledge of the reputation of the Rogers goods, and that he supposed that the resemblance of his own to the petitioners' stamps would enable him more readily to sell his goods in the markets of the country. The fact that he supposed he had a legal right to do so will exonerate him from any intention to do his neighbor a legal wrong, but his mistake as to his legal right does not lessen the injury to the petitioners. The fact that careful buyers, who scrutinize trade-marks closely, are not deceived does not materially affect the question. It only shows that the injury is less, not that there is no injury. Another class of purchasers, to whom large quantities have been sold, are deceived.

Such purchasers perhaps will have no reason to complain, as they, if they are injured by the deception, must attribute the injury to their own want of diligence.

But the petitioners stand on entirely different ground. No amount of diligence on their part will guard against the injury. An injunction is their only adequate remedy, and to that we think they are entitled.

It only remains for us to consider the extent to which the remedy should be applied. The prayer of the petition is that the respondent may be enjoined from using the stamp C. Rogers Bros. A 1, or any stamp of which the word Rogers or the words "Rogers Bros." shall form the whole or a part, and from selling goods so stamped or stamped with any stamp so nearly resembling the petitioners' stamp, "1847, Rogers Bros. A 1," as is calculated to deceive purchasers.

We think the petition should be granted so far as to restrain the use of the stamp specified, and also to restrain the use of the words "Rogers Bros."

But the use of the name Rogers ought not to be prohibited. We cannot say that every use of that name will necessarily infringe the petitioners' trade-mark. If it may be so used as not to infringe, it would be manifestly unjust to forbid such use by the respondent, inasmuch as his title to the mere name is as good apparently as the petitioners'. Even if the use of the name should, in some degree, increase the respondent's sales and thus, at least indirectly and remotely, injure the petitioners, it is an injury to which they must submit, unless there is such resemblance to the petitioners' stamp as to induce purchasers to believe that they are purchasing the petitioners' goods.

The use of a prominent name in a trade-mark will necessarily give rise to some embarrassment of this character, and those so using it must be presumed to take the risk. The respondent should also be enjoined from selling goods bearing such stamps which were manufactured since the service of the petition, or which may hereafter be manufactured. But goods then on hand or in process of manufacture may be sold in such a manner as to do the petitioners no substantial injury.

At all events the circumstances of the case are such that we are not inclined to prohibit their sale absolutely.

The general prayer that the respondents be enjoined from selling

goods stamped with a stamp so nearly resembling the petitioners' stamp that it is calculated to deceive, &c., is too vague and uncertain to be of any practical benefit if granted.

The resemblance and deception are matters of fact to be determined in each case: *Boardman v. Meriden Brit. Co.*, 36 Conn. 207.

We advise the Superior Court to render judgment for the petitioners to the extent indicated above.

Supreme Court of Iowa.

EMMA COGER v. NORTH WESTERN UNION PACKET COMPANY

Common carriers of passengers have the legal right to make reasonable and proper rules and regulations for the conduct and accommodation of all persons who travel by their conveyances.

The sale of a ticket to a passenger is a contract to carry such passenger according to their rules and regulations.

They have no right however to make rules or regulations for their passengers, based upon any distinction as to race or color.

A negro woman who purchases a first class dinner ticket on a Mississippi steamboat is entitled to sit at the same table as the other passengers.

This is a right secured to her by the laws of the state of Iowa, and the Constitution of the United States.

The object of the 14th amendment to the Constitution of the United States, was to relieve citizens of African descent, from the effects of the prejudice theretofore existing against them; and to protect them in person and property from its spirit.

THIS was an action at law to recover damages sustained by plaintiff for an assault and battery committed upon her, by the officers of a steamboat used by defendant as a common carrier in navigating the Mississippi river, while she was a passenger thereon, and for forcibly and with violence removing her from the dinner-table of said boat without cause and for no improper conduct on her part.

The defence set up was, that plaintiff is a colored woman and that there was a custom or a regulation of all boats of defendant, well known to plaintiff, under which colored persons could not receive state-rooms and first-class privileges and accommodations. The other facts are stated in the opinion.

There was a trial by a jury and a verdict for plaintiff. A motion in arrest of judgment and for a new trial, on the grounds that the verdict was not sustained by the evidence and was in conflict with the